

Department of Energy

Pt. 851, App. A

that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to §851.42:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§851.44 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§851.45 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

- (1) Subpoenas;
- (2) Orders to compel attendance;
- (3) Disclosures of information or documents obtained during an investigation or inspection;
- (4) Preliminary notices of violations; and
- (5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

APPENDIX A TO PART 851—WORKER SAFETY AND HEALTH FUNCTIONAL AREAS

This appendix establishes the mandatory requirements for implementing the applicable functional areas required by §851.24.

1. CONSTRUCTION SAFETY

(a) For each separately definable construction activity (e.g., excavations, foundations,

structural steel, roofing) the construction contractor must:

(1) Prepare and have approved by the construction manager an activity hazard analysis prior to commencement of affected work. Such analyses must:

(i) Identify foreseeable hazards and planned protective measures;

(ii) Address further hazards revealed by supplemental site information (e.g., site characterization data, as-built drawings) provided by the construction manager;

(iii) Provide drawings and/or other documentation of protective measures for which applicable Occupational Safety and Health Administration (OSHA) standards require preparation by a Professional Engineer or other qualified professional, and

(iv) Identify competent persons required for workplace inspections of the construction activity, where required by OSHA standards.

(2) Ensure workers are aware of foreseeable hazards and the protective measures described within the activity analysis prior to beginning work on the affected activity.

(3) Require that workers acknowledge being informed of the hazards and protective measures associated with assigned work activities. Those workers failing to utilize appropriate protective measures must be subject to the construction contractor's disciplinary process.

(b) During periods of active construction (i.e., excluding weekends, weather delays, or other periods of work inactivity), the construction contractor must have a designated representative on the construction worksite who is knowledgeable of the project's hazards and has full authority to act on behalf of the construction contractor. The contractor's designated representative must make frequent and regular inspections of the construction worksite to identify and correct any instances of noncompliance with project safety and health requirements.

(c) Workers must be instructed to report to the construction contractor's designated representative, hazards not previously identified or evaluated. If immediate corrective action is not possible or the hazard falls outside of project scope, the construction contractor must immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify the construction manager of the action taken. The contractor or the designated representative must stop work in the affected area until appropriate protective measures are established.

(d) The construction contractor must prepare a written construction project safety and health plan to implement the requirements of this section and obtain approval of the plan by the construction manager prior to commencement of any work covered by the plan. In the plan, the contractor must